THE WAR ON DRUGS IS LOST

NATIONAL REVIEW has attempted during its tenure as, so to speak, keeper of the conservative tablets to analyze public problems and to recommend intelligent thought. The magazine has acknowledged a variety of positions by right-minded thinkers and analysts who sometimes reach conflicting conclusions about public policy. As recently as on the question of troops to Bosnia, there was dissent within the family from our corporate conclusion that we'd be best off staying home.

For many years we have published analyses of the drug problem. An important and frequently cited essay by Professor Michael Gazzaniga (Feb. 5, 1990) brought a scientist's discipline into the picture, shedding light on matters vital to an understanding of the drug question. He wrote, for instance, about different rates of addiction, and about ambient pressures that bear on addiction. Elsewhere, Professor James Q. Wilson, now of UCLA, has written eloquently in defense of the drug war. Milton Friedman from the beginning said it would not work, and would do damage.

We have found Dr. Gazzaniga and others who have written on the subject persuasive in arguing that the weight of the evidence is against the current attempt to prohibit drugs. But NATIONAL REVIEW has not, until now, opined formally on the subject. We do so at this point. To put off a declarative judgment would be morally and intellectually weak-kneed.

Things being as they are, and people as they are, there is no way to prevent somebody, somewhere, from concluding that "NATIONAL REVIEW favors drugs." We don't; we deplore their use; we urge the stiffest feasible sentences against anyone convicted of selling a drug to a minor. But that said, it is our judgment that the war on drugs has failed, that it is diverting intelligent energy away from how to deal with the problem of addiction, that it is wasting our resources, and that it is encouraging civil, judicial, and penal procedures associated with police states. We all agree on movement toward legalization, even though we may differ on just how far.

We are joined in our judgment by Ethan A. Nadelmann, a scholar and researcher; Kurt Schmoke, a mayor and former prosecutor; Joseph D. McNamara, a former police chief; Robert W. Sweet, a federal judge and former prosecutor; Thomas Szasz, a psychiatrist; and Steven B. Duke, a law professor. Each has his own emphases, as one might expect. All agree that the celebrated war has failed, and that it is time to go home, and to mobilize fresh thought on the drug problem in the context of a free society. This symposium is our contribution to such thought.

—THE EDITORS

1. Wm. F. Buckley Jr.

Last summer WFB was asked by the New York Bar Association to make a statement to the panel of lawyers considering the drug question. He made the following statement:

WE ARE speaking of a plague that consumes an estimated $75 billion per year of public money, exacts an estimated $70 billion a year from consumers, is responsible for nearly 50 per cent of the million Americans who are today in jail, occupies an estimated 50 per cent of the trial time of our judiciary, and takes the time of 400,000 policemen—yet a plague for which no cure is at hand, nor in prospect.

Perhaps you, ladies and gentlemen of the Bar, will understand it if I chronicle my own itinerary on the subject of drugs and public policy. When I ran for mayor of New York, the political race was jocular, but the thought given to municipal problems was entirely serious, and in my paper on drugs and in my post-election book I advocated their continued embargo, but on unusual grounds. I had read—and I think the evidence continues to affirm it—that drug-taking is a gregarious activity. What this means, I said, is that an addict is in pursuit of company and therefore attempts to entice others to share with him his habit. Under the circumstances, I said, it can reasonably be held that drug-taking is a contagious disease and, accordingly, subject to the conventional restrictions employed to shield the innocent from Typhoid Mary. Some sport was made of my position by libertarians, including Professor Milton Friedman, who asked whether the police might legitimately be summoned if it were established that keeping company with me was a contagious activity.

I recall all of this in search of philosophical perspective. Back in 1965 I sought to pay conventional deference to libertarian presumptions against outlawing any activity potentially harmful only to the person who engages in that activity. I cited John Stuart Mill and, while at it, opined that there was no warrant for requiring motorcyclists to wear a helmet. I was seeking, and I thought I had found, a reason to override the presumption against intercession by the state.

About ten years later, I deferred to a different allegiance, this one not the presumptive opposition to state intervention, but a different order of priorities. A conservative should evaluate the practicality of a legal constriction, as for instance in those states whose statute books continue to outlaw sodomy, which interdiction is unenforceable, making the law nothing more than print-on-paper. I came to the conclusion that the so-called war against drugs was not working, that it would not work absent a change in the structure of the civil rights to which we are accustomed and to which we cling as a valuable part of our patrimony. And that therefore if that war

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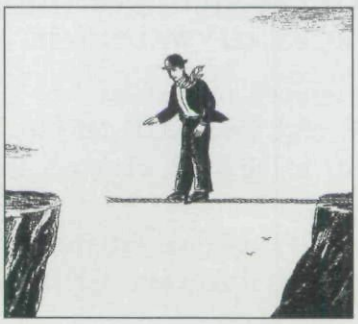
against drugs is not working, we should look into what effects the war has, a canvass of the casualties consequent on its failure to work. That consideration encouraged me to weigh utilitarian principles: the Benthamite calculus of pain and pleasure introduced by the illegalization of drugs.

A YEAR or so ago I thought to calculate a ratio, however roughly arrived at, toward the elaboration of which I would need to place a dollar figure on deprivations that do not lend themselves to quantification. Yet the law, lacking any other recourse, every day countenances such quantifications, as when asking a jury to put a dollar figure on the damage done by the loss of a plaintiff's right arm, amputated by defective machinery at the factory. My enterprise became allegorical in character—I couldn't do the arithmetic—but the model, I think, proves useful in sharpening perspectives.

Professor Steven Duke of Yale Law School, in his valuable book, *America's Longest War: Rethinking Our Tragic Crusade against Drugs*, and scholarly essay, "Drug Prohibition: An Unnatural Disaster," reminds us that it isn't the use of illegal drugs that we have any business complaining about, it is the abuse of such drugs. It is acknowledged that tens of millions of Americans (I have seen the figure 85 million) have at one time or another consumed, or exposed themselves to, an illegal drug. But the estimate authorized by the federal agency charged with such explorations is that there are not more than 1 million regular cocaine users, defined as those who have used the drug at least once in the preceding week. There are (again, an informed estimate) 5 million Americans who regularly use marijuana; and again, an estimated 70 million who once upon a time, or even twice upon a time, inhaled marijuana. From the above we reasonably deduce that Americans who abuse a drug, here defined as Americans who become addicted to it or even habituated to it, are a very small percentage of those who have experimented with a drug, or who continue to use a drug without any observable distraction in their lives or careers. About such users one might say that they are the equivalent of those Americans who drink liquor but do not become alcoholics, or those Americans who smoke cigarettes but do not suffer a shortened lifespan as a result.



Curiosity naturally flows to ask, next, How many users of illegal drugs in fact die from the use of them? The answer is complicated in part because marijuana finds itself lumped together with cocaine and heroin, and nobody has ever been found dead from marijuana. The question of deaths from cocaine is complicated by the factor of impurity. It would not be useful to draw any conclusions about alcohol consumption, for instance, by observing that, in 1931, one thousand Americans died from alcohol consumption if it happened that half of those deaths, or more than half, were the result of drinking alcohol with toxic ingredients extrinsic to the drug as conventionally used. When alcohol was illegal, the consumer could never know whether he had been given relatively harmless alcohol to drink—such alcoholic beverages as we find today in the liquor store—or whether the bootlegger had come up with paralyzing rotgut. By the same token, purchasers of illegal cocaine and heroin cannot know whether they are consuming a drug that would qualify for regulated consumption after clinical analysis.

We do know this, that more people die every year as a result of the war against drugs than die from what we call, generically, overdosing.

But we do know this, and I approach the nexus of my inquiry, which is that more people die every year as a result of the war against drugs than die from what we call, generically, overdosing. These fatalities include, perhaps most prominently, drug merchants who compete for commercial territory, but include also people who are robbed and killed by those desperate for money to buy the drug to which they have become addicted.

This is perhaps the moment to note that the pharmaceutical cost of cocaine and heroin is approximately 2 per cent of the street price of those drugs. Since a cocaine addict can spend as much as $1,000 per week to sustain his habit, he would need to come up with that $1,000. The approximate fencing cost of stolen goods is 80 per cent, so that to come up with $1,000 can require stealing $5,000 worth of jewels, cars, whatever. We can see that at free-market rates, $20 per week would provide the addict with the cocaine which, in this wartime drug situation, requires of him $1,000.

My mind turned, then, to auxiliary expenses—auxiliary pains, if you wish. The crime rate, whatever one made of its modest curtsy last year toward diminution, continues its secular rise. Serious crime is 480 per cent higher than in 1965. The correlation is not absolute, but it is suggestive: crime is reduced by the number of available enforcers of law and order, namely policemen. The heralded new crime legislation, passed last year and acclaimed by President Clinton, provides for 100,000 extra policemen, even if only for a limited amount of time. But 400,000 policemen would be freed to pursue criminals engaged in activity other than the sale and distribution of drugs if such sale and distribution, at a price at which there was no profit, were to be done by, say, a federal drugstore.

So then we attempt to put a value on the goods stolen by addicts. The figure arrived at by Professor Duke is $10 billion. But we need to add to this pain of stolen property, surely, the extra-material pain suffered by victims of robbers. If someone breaks into your house at night, perhaps holding you at gunpoint while taking your money and your jewelry and whatever, it is reasonable to assign a higher "cost" to the episode than the commercial value of the stolen money and jewelry. If we were modest, we might reasonably, however arbitrarily, put at $1,000 the

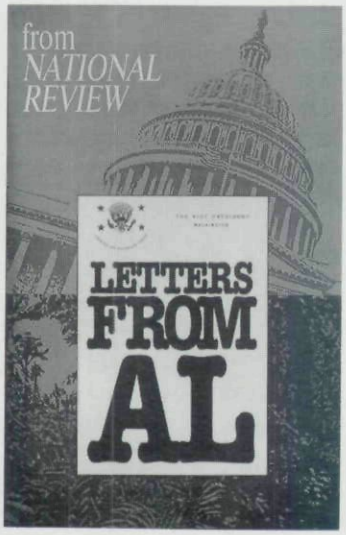
"value" of the victim's pain. But then the hurt, the psychological trauma, might be evaluated by a jury at ten times, or one hundred times, that sum.

But we must consider other factors, not readily quantifiable, but no less tangible. Fifty years ago, to walk at night across Central Park was no more adventurous than to walk down Fifth Avenue. But walking across the park is no longer done, save by the kind of people who climb the Matterhorn. Is it fair to put a value on a lost amenity? If the Metropolitan Museum were to close, mightn't we, without fear of distortion, judge that we had been deprived of something valuable? What value might we assign to confidence that, at night, one can sleep without fear of intrusion by criminals seeking money or goods exchangeable for drugs?

Pursuing utilitarian analysis, we ask: What are the relative costs, on the one hand, of medical and psychological treatment for addicts and, on the other, incarceration for drug offenses? It transpires that treatment is seven times more cost-effective. By this is meant that one dollar spent on the treatment of an addict reduces the probability of continued addiction seven times more than one dollar spent on incarceration. Looked at another way: Treatment is not now available for almost half of those who would benefit from it. Yet we are willing to build more and more jails in which to isolate drug users even though at one-seventh the cost of building and maintaining jail space and pursuing, detaining, and prosecuting the drug user, we could subsidize commensurately effective medical care and psychological treatment.

I HAVE spared you, even as I spared myself, an arithmetical consummation of my inquiry, but the data here cited instruct us that the cost of the drug war is many times more painful, in all its manifestations, than would be the licensing of drugs combined with intensive education of non-users and intensive education designed to warn those who experiment with drugs. We have seen a substantial reduction in the use of tobacco over the last thirty years, and this is not because tobacco became illegal but because a sentient community began, in substantial numbers, to apprehend the high cost of tobacco to human health, even as, we can assume, a growing number of Americans desist from practicing unsafe sex and using polluted needles in this age of AIDS. If 80 million Americans can experiment with drugs and resist addiction using information publicly available, we can reasonably hope that approximately the same number would resist the temptation to purchase such drugs even if they were available at a federal drugstore at the mere cost of production.

And added to the above is the point of civil justice. Those who suffer from the abuse of drugs have themselves to blame for it. This does not mean that society is absolved from active concern for their plight. It does mean that their plight is subordinate to the plight of those citizens who do not experiment with drugs but



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whose life, liberty, and property are substantially affected by the illegalization of the drugs sought after by the minority.

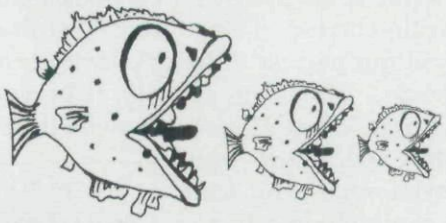
I have not spoken of the cost to our society of the astonishing legal weapons available now to policemen and prosecutors; of the penalty of forfeiture of one's home and property for violation of laws which, though designed to advance the war against drugs, could legally be used—I am told by learned counsel—as penalties for the neglect of one's pets. I leave it at this, that it is outrageous to live in a society whose laws tolerate sending young people to life in prison because they grew, or distributed, a dozen ounces of marijuana. I would hope that the good offices of your vital profession would mobilize at least to protest such excesses of wartime zeal, the legal equivalent of a My Lai massacre. And perhaps proceed to recommend the legalization of the sale of most drugs, except to minors. □

2. Ethan A. Nadelmann

We turned to Mr. Nadelmann to pursue the inquiry. Formerly in the Political Science Department at Princeton, he is now the director of the Lindesmith Center, a drug-policy research institute in New York City. He is the author of Cops across Borders: The Internationalization of U.S. Criminal Law Enforcement.

THE essayists assembled here do not agree exactly on which aspect of the war on drugs is most disgraceful, or on which alternative to our current policies is most desirable, but we do agree, as Mr. Buckley expected, on the following: The "war on drugs" has failed to accomplish its stated objectives, and it cannot succeed so long as we remain a free society, bound by our Constitution. Our prohibitionist approach to drug control is responsible for most of the ills commonly associated with America's "drug problem." And some measure of legal availability and regulation is essential if we are to reduce significantly the negative consequences of both drug use and our drug-control policies.

Proponents of the war on drugs focus on one apparent success: The substantial decline during the 1980s in the number of Americans who consumed marijuana and cocaine. Yet that decline began well before the Federal Government intensified its "war on drugs" in 1986, and it succeeded principally in reducing illicit drug use among middle-class Americans, who were least likely to develop drug-related problems.



Far more significant were the dramatic increases in drug- and prohibition-related disease, death, and crime. Crack cocaine—as much a creature of prohibition as 180-proof moonshine during alcohol prohibition—became the drug of choice in most inner cities. AIDS spread rapidly among injecting drug addicts, their lovers, and their children, while government policies restricted the availability of clean syringes that might have stemmed the epidemic. And prohibition-related violence reached unprecedented levels as a new generation of Al Capones competed for turf, killing not just one another but innocent bystanders, witnesses, and law-enforcement officials.

There are several basic truths about drugs and drug policy which a growing number of Americans have come to acknowledge.

1. Most people can use most drugs without doing much harm to themselves or anyone else, as Mr. Buckley reminds us, citing Professor Duke. Only a tiny percentage of the 70 million Americans who have tried marijuana have gone on to have problems with that or any other drug. The same is true of the tens of millions of Americans who have used cocaine or hallucinogens. Most of those who did have a problem at one time or another don't any more. That a few million Americans have serious problems with illicit drugs today is an issue meriting responsible national attention, but it is no reason to demonize those drugs and the people who use them.

We're unlikely to evolve toward a more effective and humane drug policy unless we begin to change the ways we think about drugs and drug control.

Perspective can be had from what is truly the most pervasive drug scandal in the United States: the epidemic of undertreatment of pain. "Addiction" to (i.e., dependence on) opiates among the terminally ill is the appropriate course of medical treatment. The only reason for the failure to prescribe adequate doses of pain-relieving opiates is the "opiaphobia" that causes doctors to ignore the medical evidence, nurses to turn away from their patients' cries of pain, and some patients themselves to elect to suffer debilitating and demoralizing pain rather than submit to a proper dose of drugs.

The tendency to put anti-drug ideology ahead of compassionate treatment of pain is apparent in another area. Thousands of Americans now smoke marijuana for purely medical reasons: among others, to ease the nausea of chemotherapy; to reduce the pain of multiple sclerosis; to alleviate the symptoms of glaucoma; to improve appetite dangerously reduced from AIDS. They use it as an effective medicine, yet they are technically regarded as criminals, and every year many are jailed. Although more than 75 per cent of Americans believe that marijuana should be available legally for medical purposes, the Federal Government refuses to legalize access or even to sponsor research.

2. Drugs are here to stay. The time has come to abandon the concept of a "drug-free society." We need to focus on learning to live with drugs in such a way that they do the least possible harm. So far as I can ascertain, the societies that have proved most successful in minimizing drug-related harm aren't those that have sought to banish drugs, but those that have figured out how to control and manage drug use through community discipline, including the establishment of powerful social norms. That is precisely the challenge now confronting American society regarding alcohol: How do we live with

a very powerful and dangerous drug—more powerful and dangerous than many illicit drugs—that, we have learned, cannot be effectively prohibited?

Virtually all Americans have used some psychoactive substance, whether caffeine or nicotine or marijuana. In many cases, the use of cocaine and heroin represents a form of self-medication against physical and emotional pain among people who do not have access to psychotherapy or Prozac. The market in illicit drugs is as great as it is in the inner cities because palliatives for pain and depression are harder to come by and because there are fewer economic opportunities that can compete with the profits of violating prohibition.

3. Prohibition is no way to run a drug policy. We learned that with alcohol during the first third of this century and we're probably wise enough as a society not to try to repeat the mistake with nicotine. Prohibitions for kids make sense. It's reasonable to prohibit drug-related misbehavior that endangers others, such as driving under the influence of alcohol and other drugs, or smoking in enclosed spaces. But whatever its benefits in deterring some Americans from becoming drug abusers, America's indiscriminate drug prohibition is responsible for too much crime, disease, and death to qualify as sensible policy.

4. There is a wide range of choice in drug-policy options between the free-market approach favored by Milton Friedman and Thomas Szasz, and the zero-tolerance approach of William Bennett. These options fall under the concept of harm reduction. That concept holds that drug policies need to focus on *reducing crime*, whether engendered by drugs or by the prohibition of drugs. And it holds that disease and death can be diminished even among people who can't, or won't, stop taking drugs. This pragmatic approach is followed in the Netherlands, Switzerland, Australia, and parts of Germany, Austria, Britain, and a growing number of other countries.

American drug warriors like to denigrate the Dutch, but the fact remains that Dutch drug policy has been dramatically more successful than U.S. drug policy. The average age of heroin addicts in the Netherlands has been increasing for almost a decade; HIV rates among addicts are dramatically lower than in the United States; police don't waste resources on non-disruptive drug users but, rather, focus on major dealers or petty dealers who create public nuisances. The decriminalized cannabis markets are regulated in a quasi-legal fashion far more effective and inexpensive than the U.S. equivalent.

The Swiss have embarked on a national experiment of prescribing heroin to addicts. The two-year-old plan, begun in Zurich, is designed to determine whether they can reduce drug- and prohibition-related crime, disease, and death by making pharmaceutical heroin legally available to addicts at regulated clinics. The results of the experiment have been sufficiently encouraging that it is being extended to over a dozen Swiss cities. Similar experiments are being initiated by the Dutch and Australians. There are no good scientific or ethical reasons not to try a heroin-prescription experiment in the United States.

Our Federal Government puts politics over science by ignoring extensive scientific evidence that sterile syringes can reduce the spread of AIDS. Connecticut permitted needle sales in drugstores in 1992, and the policy resulted in a 40 per cent decrease in needle sharing among injecting drug users, at no cost to taxpayers.

We see similar foolishness when it comes to methadone. Methadone is to street heroin more or less what nicotine chewing-gum and skin patches are to cigarettes. Hundreds of studies, as well as a National Academy of Sciences report last year, have concluded that methadone is more effective than any other treatment in reducing heroin-related crime, disease, and death. In Australia and much of Europe, addicts who want to reduce or quit their heroin use can obtain a prescription for methadone from a GP and fill the prescription at a local pharmacy. In the United States, by contrast, methadone is available only at highly regulated and expensive clinics.

A WARNING of the prohibitionists is that there's no going back once we reverse course and legalize drugs. But what the reforms in Europe and Australia demonstrate is that our choices are not all or nothing. Virtually all the steps described above represent modest and relatively low-risk initiatives to reduce drug and prohibition-related harms *within our current prohibition regime*. At the same time, these steps are helpful in thinking through the consequences of more far-reaching drug-policy reform. You don't need to go for formal legalization to embark on numerous reforms that would yield great dividends. But these run into opiaphobia.

The blame is widespread. Cowardly Presidents, unwilling to assume leadership for reform. A Congress so concerned with appearing tough on crime that it is unwilling to analyze alternative approaches. A drug czar who debases public debate by equating legalization with genocide. A drug enforcement/treatment complex so hooked on government dollars that the anti-drug crusade has become a vested interest.

But perhaps the worst offender is the U.S. Drug Enforcement Administration—not so much the agents who risk their lives trying to apprehend major drug traffickers as the ideologically driven bureaucrats who intimidate and persecute doctors for prescribing pain medication in medically appropriate (but legally suspicious) doses, who hobble methadone programs with their overregulation, who acknowledge that law enforcement alone cannot solve the drug problem but then proceed to undermine innovative public-health initiatives.

You don't need to go for formal legalization to embark on numerous reforms that would yield great dividends. But these run into opiaphobia.

I am often baffled by the resistance of conservatives to drug-policy reform, but encouraged by the willingness of many to reassess their views once they have heard the evidence. Conservatives who oppose the expansion of federal power cannot look approvingly on the growth of the fed-

eral drug-enforcement bureaucracy and federal efforts to coerce states into adopting federally formulated drug policies. Those who focus on the victimization of Americans by predatory criminals can hardly support our massive diversion of law-enforcement resources to apprehending and imprisoning nonviolent vice merchants and consumers. Those concerned with overregulation can hardly countenance our current handling of methadone, our refusal to allow over-the-counter sale of sterile syringes, our prohibition of medical marijuana. And conservatives who turn to the Bible for guidance on current affairs can find little justification there for our war on drugs and the people who use and sell them. □

3. Kurt Schmoke

Mayor Kurt Schmoke of Baltimore may be the only sitting politician who advocates, if not outright legalization, reforms in that direction. But even if he is lonely, he is not hopeless on the question of democratic political enlightenment. Mr. Schmoke was first elected mayor in 1987. He is a graduate of Yale University and a Rhodes Scholar.

SERIOUS problems require serious minds. That may help explain why William F. Buckley Jr. was one of the first public figures to acknowledge that the war on drugs is a failure. I don't know how Mr. Buckley's early apostasy about the war on drugs was greeted by his conservative colleagues—although it's not hard to guess—but I remember the reaction in 1988 to my own call for a national debate on that war. A leading congressional liberal called me the most dangerous man in America. A national magazine referred to me as "a nice young man who had a bright future." Many of my political supporters encouraged me to drop the subject and stick to potholes.

Potholes are important, but, as Mr. Buckley argued to the New York Bar Association, dropping the subject of the war on drugs means dropping any hope of solving some of America's most difficult social problems. The war on drugs isn't a solution in search of a problem. It's a problem in search of a solution.

How big a problem? Very big. As Mr. Buckley points out, "More people die every year as a result of the war on drugs than die from what we call, generically, overdosing." He is similarly correct in noting that blanket prohibition is a major source of crime: it inflates the price of drugs, inviting new criminals to enter the trade; reduces the number of police officers available to investigate violent crime; fosters adulterated, even poisonous, drugs; and contributes significantly to the transmission of HIV. These are not problems that are merely tangential to the war on drugs. These are problems caused, or made substantially worse, by the war on drugs.

That is why I have long advocated that the war on drugs be fought as a public-health war. This is sometimes called medicalization, or regulated distribution. Under this alternative to the war on drugs, the government would set up a regulatory regime to pull addicts into the public-health system. The government, not criminal traffickers, would control the price, distribution, and purity of addictive substances—which it already does with prescription drugs. This would take most of the profit out of drug trafficking, and it is profits that drive the crime. Addicts would be treated—and if necessary maintained—under medical auspices. Children would find it harder, not easier, to get their hands on drugs. And law enforcement would be able to concentrate on the highest echelons of drug-trafficking enterprises.

I do not specifically endorse the idea of a federal drugstore, particularly if that means selling drugs to people who are not already physically or psychologically addicted. On the other hand, I do support a national commission to study *all* possible alternatives (including legalization) to our failed strategy of blanket prohibition. This commission would be similar to the 1929 Wickersham Commission, which President Hoover set up to study how to enforce alcohol prohibition more strictly. Although Hoover tried to conceal the results, the commission concluded that alcohol prohibition was, in the words of Walter Lippmann, a "helpless failure." I believe that an objective and nonpartisan inquiry would come to the same conclusion about the war on drugs.

I also support Mr. Buckley's idea of applying a "utilitarian" calculus to the war on drugs. Congress is quite enthusiastic about weighing the costs and benefits of health care, welfare, community development, and other domestic programs. It should apply a similar analysis to the war on drugs, a war that is now costing the Federal Government $14 billion a year.

In weighing the costs and benefits, Congress would not have to start from scratch. There have been many studies and experiments, including our needle-exchange program in Baltimore. This program costs $160,000 a year. The cost to the state of Maryland of taking care of just one adult AIDS patient infected through the sharing of a syringe is $102,000 to $120,000. In other words, if just two addicts are protected from HIV through the city's needle exchange, the program will have paid for itself.

But a cost–benefit analysis for the war on drugs would do more than offer a guide to the sensible allocation of federal dollars. It would also make advocating changes in the war on drugs less politically risky for elected officials. Unfortunately, that risk has kept most political leaders in lockstep support of the war on drugs.

I understand their reluctance to call for an end to blanket prohibition, especially since individual mayors and governors cannot, by themselves, end the war on drugs or its devastating effects on their communities. However, I also believe that the political risks of debating and criticizing the war on drugs have been overstated. I have been re-elected twice since 1988. In my most recent election, last year, my opponent specifically attacked my call for a

new strategy in the war on drugs. She advocated "zero tolerance," which is more of a slogan than a policy, and said she would sign the Atlanta resolution, which supports the status quo. In spite of her distortions of my record on drug policy, I won re-election by a 20-point margin, the widest margin in my political career.

Although I strongly believe that changes in national drug policy must be national in scope, I have nevertheless tried to demonstrate that some reforms can be made on the local level. For example, in 1993 I formed a Mayor's Working Group on Drug Policy Reform, and I have since implemented most of its major recommendations. These recommendations included providing for more community policing; encouraging Baltimore's teaching hospitals to make addiction treatment a larger part of their curriculum; and, most important, developing the needle-exchange program mentioned above.

Needle exchange was my top legislative priority in 1994. We could not begin the program without a change in the state's drug-paraphernalia laws. In the previous two years, lawmakers had been reluctant to go along, in part out of fear that they would be accused of condoning drug use. But in 1994, we were able to convince the legislature that needle exchange would not increase drug use but instead would save lives, and perhaps even reduce crime.

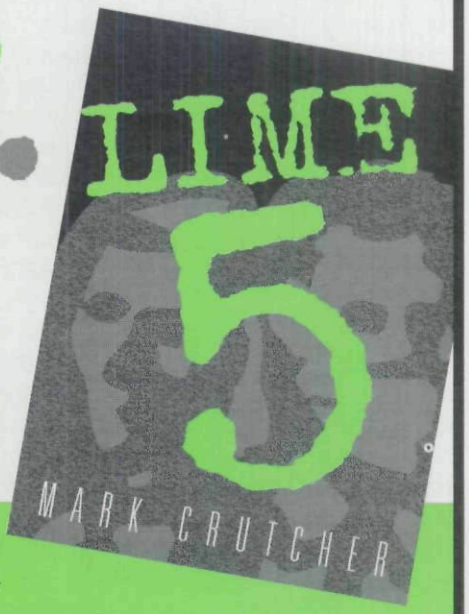
The most politically effective argument in selling needle exchange was that it would slow the spread of AIDS. That is because 70 per cent of new AIDS cases in Baltimore are related to intravenous drug use, and AIDS is now the number-one killer of both young men and young women in Baltimore. (This crisis is not unique to Baltimore, and the problem is especially horrendous for African-Americans. A recent report entitled *Health Emergency: The Spread of Drug-Related AIDS among African-Americans and Latinos*, shows that 73,000 African-Americans have drug-related AIDS or have died from it. Among people who inject drugs, African-Americans are almost 5 times as likely as whites to be diagnosed with AIDS. And for African-Americans, the risk of getting AIDS is 7 times greater than the risk of dying from an overdose.)

I also believe that the political risks of debating and criticizing the war on drugs have been overstated.

I'm proud that Baltimore now has the largest government-run needle exchange program in the country. That program is being thoroughly evaluated by the Johns Hopkins School of Public Health and Hygiene. I expect that evaluation to show that needle exchange is saving lives, a claim that the war on drugs has not been able to make for more than eighty years.

Mario Cuomo once made an observation that both liberals and conservatives should feel comfortable endorsing. He said that policymakers must distinguish between ideas

FORCED SEX.
MUTILATION.
DEATH.



Young women are being raped, sexually assaulted, mutilated and killed inside American abortion clinics.

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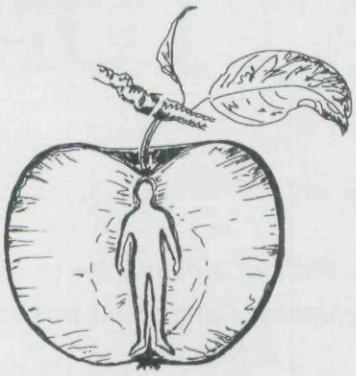
that sound good and good ideas that are sound. The current war on drugs is an idea that sounds good, but it is not a good idea that is sound. After hundreds of billions of dollars spent trying to stop the supply and demand of drugs, after the break-up of thousands of families because of the arrest of a nonviolent drug offender, after eight decades of failure, how much longer will the war on drugs continue?

I once told a television reporter that the war on drugs was our domestic Vietnam. Conservatives and liberals disagree about the justice of that war. But we generally agree that the strategy for fighting it didn't work, and as a result the war lasted too long and cost too many lives. The same is true of the war on drugs. It's time to bring this enervating war to an end. It's time for peace. □

4. Joseph D. McNamara

We turned next to a former police chief—Mr. McNamara was chief of police in Kansas City, Mo., and San Jose, Calif.—to inquire into the special problems of the war on drugs on the street. Mr. McNamara, who has a doctorate in public administration from Harvard, is the author of four books on policing and is currently a research fellow at the Hoover Institution.

"IT'S THE money, stupid." After 35 years as a police officer in three of the country's largest cities, that is my message to the righteous politicians who obstinately proclaim that a war on drugs will lead to a drug-free America. About $500 worth of heroin or cocaine in a source country will bring in as much as $100,000 on the streets of an American city. All the cops, armies, prisons, and executions in the world cannot impede a market with that kind of tax-free profit margin. It is the illegality that permits the obscene markup, enriching drug traffickers, distributors, dealers, crooked cops, lawyers, judges, politicians, bankers, businessmen.



Naturally, these people are against reform of the drug laws. Drug crooks align themselves with their avowed enemies, such as the Drug Enforcement Administration, in opposing drug reform. They are joined by many others with vested economic interests. President Eisenhower warned of a military–industrial complex that would elevate the defense budget unnecessarily. That military–industrial complex pales in comparison to the host of industries catering to our national puritanical hypocrisy—researchers willing to tell the government what it wants to hear, prison builders, correction and parole officers' associations, drug-testing companies, and dubious purveyors of anti-drug education. Mayor Schmoke is correct about the vested interests in the drug war.

Sadly, the police have been pushed into a war they did not start and cannot win. It was not the police who lobbied in 1914 for passage of the Harrison Act, which first criminalized drugs. It was the Protestant missionary societies in China, the Woman's Christian Temperance Union, and other such organizations that viewed the taking of psychoactive substances as sinful. These groups gradually got their religious tenets enacted into penal statutes under which the "sinners" go to jail. The religious origin is significant for two reasons. If drugs had been outlawed because the police had complained that drug use caused crime and disorder, the policy would have been more acceptable to the public and won more compliance. And the conviction that the use of certain drugs is immoral chills the ability to scrutinize rationally and to debate the effects of the drug war. When Ethan Nadelmann pointed out once that it was illogical for the most hazardous drugs, alcohol and nicotine, to be legal while less dangerous drugs were illegal, he was roundly denounced. A leading conservative supporter of the drug war contended that while alcohol and nicotine addiction was unhealthy and could even cost lives, addiction to illegal drugs could result in the loss of one's soul. No empirical proof was given.

The demonizing of these drugs and their users encourages demagoguery. William Bennett, the nation's first drug czar, would cut off the heads of drug sellers. Bennett's anti-drug rhetoric is echoed by Joseph Califano, the liberal former Secretary of Health, Education, and Welfare, now chairman of the Center on Addiction and Substance Abuse at Columbia University. Last June, the Center hysterically suggested (with great media coverage) that binge drinking and other substance abuse were taking over the nation's colleges, leading to an increase in rapes, assaults, and murders and to the spread of AIDS and other sexually transmitted diseases. The validity of the research in Califano's report was persuasively debunked by Kathy McNamara-Meis, writing in *Forbes Media Critic*. She was equally critical of the media for accepting the Center's sensational statements.

Conservatives like Bennett normally advocate minimal government. Liberals like Califano ordinarily recoil from the draconian prison sentences and property seizures used in the drug war. This illustrates why it is so difficult to get politicians to concede that alternative approaches to drug control need to be studied. We are familiar with the perception that the first casualty in any war is truth. Eighty years of drug-war propaganda has so influenced public opinion that most politicians believe they will lose their jobs if their opponents can claim they are soft on drugs and crime. Yet, public doubt is growing. Gallup reports that in 1990 only 4 per cent of Americans believed that "arresting the people who use drugs" is the best way for the government to allocate resources.

It was my own experience as a policeman trying to enforce the laws against drugs that led me to change my attitude about drug-control policy. The analogy to the Vietnam War is fitting. I was a willing foot soldier at the start of the modern drug war, pounding a beat in Harlem. During the early 1960s, as heroin use spread, we made

many arrests, but it did not take long before cops realized that arrests did not lessen drug selling or drug use.

I came to realize just how ineffective we were in deterring drug use one day when my partner and I arrested an addict for possession of a hypodermic needle and heroin. Our prisoner had already shot up, but the heroin charge we were prepared to level at him was based on the tiny residue in the bottle cap used to heat the fix. It was petty, but then—and now—such arrests are valued because they can be used to claim success, like the body counts during the Vietnam War.

In this case the addict offered to "give" us a pusher in exchange for letting him go. He would lure the pusher into a hallway where we could then arrest him in the act of selling drugs. We trailed the addict along Lenox Avenue. To our surprise, he spoke to one man after another.

It suddenly struck me as humiliating, the whole scene. Here it was, broad daylight. We were brilliantly visible, in uniform, in a marked police car: and yet a few feet away, our quarry was attempting one drug transaction after another. The first two dealers weren't deterred by our presence—they were simply sold out, and we could not arrest them without the goods. We finally arrested the third pusher, letting the first addict escape, as we had covenanted. The man we brought in was selling drugs only to support his own habit.

Another inherent difficulty in drug enforcement is that violators are engaging in consensual activity and seek privacy. Every day, millions of drug crimes similar to what took place in front of our police car occur without police knowledge. To enforce drug laws the police have to resort to undercover work, which is dangerous to them and also to innocent bystanders. Drug enforcement often involves questionable ethical behavior by the police, such as what we did in letting a guilty person go free because he enticed someone else into violating the law.

Soldiers in a war need to dehumanize the enemy, and many cops look on drug users as less than human. The former police chief of Los Angeles, Daryl Gates, testified before the United States Senate that casual users should be taken out and shot. He defended the statement to the *Los Angeles Times* by saying, "We're in a war." New York police officers convicted of beating and robbing drug dealers (their boss at the time is now Director of the White House's Office of National Drug Control Policy) rationalized their crimes by saying it was impossible to stop drug dealing and these guys were the enemy. Why should they get to keep all the money?

POLICE scandals are an untallied cost of the drug war. The FBI, the Drug Enforcement Administration, and even the Coast Guard have had to admit to corruption. The gravity of the police crimes is as disturbing as the volume. In New Orleans, a uniformed cop in league with a drug dealer has been convicted of murdering her partner and shop owners during a robbery committed while she was on patrol. In Washington, D.C., and in Atlanta, cops in drug stings were arrested for stealing and taking bribes. New York State troopers falsified drug evidence that sent people to prison.

And it is not just the rank and file. The former police chief of Detroit went to prison for stealing police drug-buy money. In a small New England town, the chief stole drugs from the evidence locker for his own use. And the DEA agent who arrested Panama's General Noriega is in jail for stealing laundered drug money.

The drug war is as lethal as it is corrupting. And the police and drug criminals are not the only casualties. An innocent 75-year-old African-American minister died of a heart attack struggling with Boston cops who were mistakenly arresting him because an informant had given them the wrong address. A rancher in Ventura County, California, was killed by a police SWAT team serving a search warrant in the mistaken belief that he was growing marijuana. In Los Angeles, a three-year-old girl died of gunshot wounds after her mother took a wrong turn into a street controlled by a drug-dealing gang. They fired on the car because it had invaded their marketplace.

Mayor Schmoke would ask community meetings three questions. 1) 'Have we won the drug war?' People laughed. 2) 'Are we winning the drug war?' People shook their heads. 3) 'If we keep doing what we are doing will we have won the drug war in ten years?' A resounding No.

The violence comes from the competition for illegal profits among dealers, not from crazed drug users. Professor Milton Friedman has estimated that as many as 10,000 additional homicides a year are plausibly attributed to the drug war.

Worse still, the drug war has become a race war in which non-whites are arrested and imprisoned at 4 to 5 times the rate whites are, even though most drug crimes are committed by whites. The Sentencing Research Project reports that one-third of black men are in jail or under penal supervision, largely because of drug arrests. The drug war has established thriving criminal enterprises which recruit teenagers into criminal careers.

It was such issues that engaged law-enforcement leaders—most of them police chiefs—from fifty agencies during a two-day conference at the Hoover Institution in May 1995. Among the speakers was our colleague in this symposium, Mayor Kurt Schmoke, who told the group that he had visited a high school and asked the students if the high dropout rate was due to kids' being hooked on drugs. He was told that the kids were dropping out because they were hooked on drug money, not drugs. He also told us that when he went to community meetings he would ask the audience three questions. 1) "Have we won the drug war?" People laughed. 2) "Are we winning the drug war?" People shook their heads. 3) "If we keep doing what we are doing will we have won the drug war in ten years?" The answer was a resounding No.

At the end of the conference, the police participants completed an evaluation form. Ninety per cent voted no confidence in the war on drugs. They were unanimous in

favoring more treatment and education over more arrests and prisons. They were unanimous in recommending a presidential blue-ribbon commission to evaluate the drug war and to explore alternative methods of drug control. In sum, the tough-minded law-enforcement officials took positions directly contrary to those of Congress and the President.

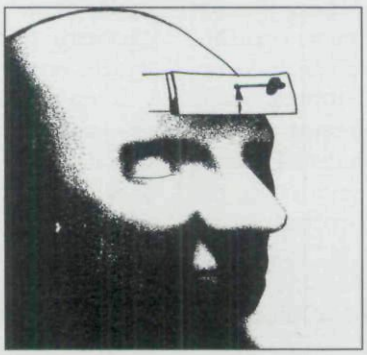
One hopes that politicians will realize that no one can accuse them of being soft on drugs if they vote for changes suggested by many thoughtful people in law enforcement. If the politicians tone down their rhetoric it will permit police leaders to expose the costs of our present drug-control policies. Public opinion will then allow policy changes to decriminalize marijuana and stop the arrest of hundreds of thousands of people every year. The enormous savings can be used for what the public really wants—the prevention of violent crime. □

5. Robert W. Sweet

To ponder the legal and judicial problems that arise from the drug war we turned to Robert Sweet, a District Judge in New York City. He has served as an Assistant U.S. Attorney and as Deputy Mayor of New York City under John Lindsay. He is a graduate of Yale and of Yale Law School.

WHY does a sitting judge, constitutionally charged with enforcing the laws of the United States, seek the abolition of the criminal penalties attached to drug use and distribution? The answer in my case stems from personal experience, leading to the conviction that our present policy debases the rule of law and that its fundamental premise is flawed.

In college in the Forties, while experimenting with the drug of choice—alcohol—I cheerfully sang the lyrics of "Cocaine Bill and Morphine Sue," without any understanding of the reality behind the words. As an Assistant United States Attorney in the Fifties, I accepted the enforcement of the drug laws without question. In the Sixties, as Deputy Mayor of the City of New York, I supported methadone and various modalities of treatment and rehabilitation. After becoming a federal trial judge in 1978, I presided over drug trials and sought to impose just sentences ranging from probation to twenty years.



Then Congress enacted mandatory minimum sentences, and judicial discretion was radically restricted. The day in the fall of 1988 that I was mandated to sentence Luis Quinones, an 18-year-old with no prior record, to ten years of real time because he was a bouncer in an apartment where drugs were being sold, I faced our national drug policy and the need to reexamine it. Assisted by the writings of Professor Ethan Nadelmann I concluded that our present policy of criminal prohibition was a monumental error. A number of other judges have reached the same conclusion. Judge Weinstein has characterized our present policy as "utter futility," and Judge Knapp has likened it to "taking minnows out of the pond."

As Chief McNamara writes, the realities of criminal prohibition are becoming recognized. The first and foremost effect is the creation of a pervasive and unbelievably powerful underground economy.

The Economist estimates that the markup on cocaine and heroin is not 5,000 per cent, as Messrs. Buckley and Duke suggest, but 20,000 per cent. The drug market in the United States is estimated at $150 billion a year. At least one group of distributors in a case before me sold 37,500 kilos of cocaine a month for gross sales of almost $20 million a month, and this group was but one of a number operating here.

While this economic engine drives forward, so have our efforts to punish those who operate it. Today we have the highest incarceration rate for any Western nation, almost 1 million [There are higher estimates. —ED.] in jails or prisons at a cost of $20 billion a year. Federal drug cases have trebled in ten years, up 25 per cent in 1993 alone, with marijuana cases up 17 per cent. The total federal expenditure on the drug war this year under the proposed budget will exceed $17 billion. Ten years ago the annual expenditure on the drug war was $5 billion for all governments, federal, state, and local.

While our expenditures have increased tenfold, the number of Americans using drugs has remained relatively constant at 40 million. Steady users are estimated to be 6 million, with 1 to 2 million of those seriously disordered. Our present prohibition policy has failed, flatly and without serious question.

Secondly, the rule of law has been debased by the use of criminal sanctions to alter personal conduct. Of course, the same effort was made in the Twenties and Thirties with respect to alcohol, with the same results. Al Capone and Nicky Barnes are interchangeable. Drive-by shootings, turf wars, mugging, and random violence are all the direct result of criminal prohibition. Courts are clogged with drug cases to such an extent that in some jurisdictions (the Eastern District of New York and the Southern District of Florida, for example) it is difficult to find the resources to try civil cases; yet, the street-corner availability of drugs is known to every citizen.

The rights of the individual have been curtailed in the name of the War on Drugs. We have seen the elimination of an accused's right to pretrial release for most charges under the drug laws; heightened restrictions on post-conviction bail; and invasions into the attorney–client relationship through criminal forfeiture.

The criteria for securing a search warrant have been relaxed. In drug cases, the Supreme Court has permitted the issuance of search warrants based on anonymous tips and tips from informants known to be corrupt and unreliable; permitted warrantless searches of fields, barns, and private property near a residence; and upheld evidence

obtained under defective search warrants if the officers executing the warrant acted in "good faith." Taken together, these holdings have been characterized as "the drug exception to the Fourth Amendment."

Police corruption and the unwholesome practice of using confidential informants (one of whom made over $100,000 in a case before me) have been noted by Chief McNamara.

Finally, the fundamental flaw, which will ultimately destroy this prohibition as it did the last one, is that criminal sanctions cannot, and should not attempt to, prohibit personal conduct which does no harm to others. Personal liberty surely must extend to what, when, and how much a citizen can ingest.

The Framers of our Constitution explicitly acknowledged that the individual possesses certain rights not enumerated in the text of the Constitution and not contingent upon the relationship between the individual and the Federal Government. When a right has been narrowly defined as, for example, the right to possess marijuana or cocaine, the courts have refused to recognize it as one that is fundamental in nature. However, when the right to ingest substances is considered in more general terms as the right to self-determination, that right has a constitutional foundation as yet undeclared.

To overturn the present policy will not be easy, given the established bureaucracy, but President Kennedy at the Berlin Wall was correct: "Change is the law of life." We must recognize that drug use is first and foremost a health problem, and that, as Professor Nadelmann has established, mind-altering substances are a part of modern life to be understood and their effects ameliorated, rather than grounds for prosecution.

Alcohol and tobacco have a social cost when abused, and society has properly concluded that abuse of these drugs is a health problem, not a criminal issue. Indeed, our experience with the reduction of 50 per cent in the use of tobacco—the most addicting of drugs, which results in 400,000 deaths a year—confirms the wisdom of that policy. To distinguish between these substances and heroin or cocaine is mere tautology.

Congress should end the criminalization of marijuana, which is now widely acknowledged to be without deleterious effect. That reform alone would take 450,000 arrests out of the system.

While the medicalization of the issue is going forward, Congress should accept the recommendations of President Nixon's commission on the drug laws and of the National Academy of Sciences in 1982 and end the criminalization of marijuana, which is now widely acknowledged to be without deleterious effect. That reform alone would take 450,000 arrests out of the system.

The latest crime bill proposed a study of violence and crime encompassing drug policy but failed to fund it. The Surgeon General proposed such a study and got fired. Such a study, if fairly conducted, would compel the abolition of criminal prohibition of drugs by the Federal Government, permitting all drugs to be treated much the same as alcohol: restricted by the individual states as to time and place of sale, barred from minors, subject to truth in advertising, and made the source of tax revenue. As with alcohol, those who harm or pose a threat to others while under the influence of drugs would face criminal sanctions.

The effect of the underworld drug economy, the debasement of the rule of law, and the undermining of fundamental fairness and individual rights under the war on drugs all combine to require that the criminal prohibition against drug use and distribution be ended. □

6. Thomas Szasz

Dr. Szasz, of the Department of Psychiatry at Syracuse University, has for many years argued the medical case that proscribed drugs, while catastrophic in their effect on some people, are, when used by most, taken without permanent damage. He has also, in his numerous books, pleaded the libertarian point, namely that drug-taking is the individual's business and responsibility.

THE war on drugs is a mass movement characterized by the demonizing, as Chief McNamara suggests, of certain objects and persons ("drugs," "addicts," "traffickers") as the incarnations of evil. Hence, it is foolish to dwell on the drug prohibitionist's failure to attain his avowed aims. Since he wages war on evil, his very effort is synonymous with success. It is a fatal weakness of prudential critiques of drug policy that they ignore the "religious" character of the war on drugs.

The Crusaders' war on the Infidel dramatized their unwavering devotion to the True Faith. The Communists' war on private property dramatized their unwavering devotion to the ideal of a society free of economic exploitation. America's war on drugs dramatizes our unwavering devotion to the ideal of a "drug-free" society. The right analogy for America's war on drugs is not the Vietnam War, but Communism.

The Soviet Union was the embodiment of the principle that private property is evil. To protect people from dangerous capitalists, the USSR criminalized leaving the country without permission. The Russians are now paying the price of their anti-capitalist mentality.

Today, the United States is the embodiment of the principle that self-medication is evil. To protect people from rejecting protection from dangerous drugs, the U.S. criminalizes self-medication without a prescription. We are now paying the price of our anti-drug mentality.

William Bennett is right: Drug use and drug controls are primarily moral issues. But whereas Bennett sees self-medication as wicked and drug criminalization as virtuous, I see self-medication as a basic human right (with unqualified responsibility for its consequences) and drug criminalization as sinful (hypocritical and unenforceable).

Among the sins of the drug warriors, I view the follow-

ing as especially important: 1) destroying Americans' attachment to, indeed their very understanding of, limited government; 2) converting tort law into an instrument of economic redistribution and the principle of *caveat emptor* into that of *caveat vendor*; 3) turning doctors into drug-monopolists (by making the purchase of most drugs, especially "pleasure-producing" drugs, illegal without a physician's prescription), and perverting the medical criteria of disease and treatment (by defining certain "bad" choices as diseases, and certain "good" coercions as treatments); 4) obscuring the obvious fact that all biologically active substances are potentially dangerous (in certain doses, to some persons, under certain circumstances); 5) converting the relationship between doctor and patient from a contract between two responsible adults into a domination–dependence relationship; and 6) redefining the relationship between drug seller and drug buyer from a contract between two responsible adults into a victimization relationship.

In his great work *Ancient Law*, Sir Henry Maine articulated his famous general proposition: "The movement of the progressive societies has hitherto been a movement from Status to Contract." The war on drugs is but one manifestation, albeit a very important one, of a radical reversal of this movement. Gradually, the American polity has become transformed from a limited government (the Rule of Law) into an unlimited Therapeutic State (relations based on status).

I reject my fellow panelists' sympathetic stance toward medical drug controls. To treat people in great pain effectively, we do not need more "compassion"; we simply need a social setting where individuals have legal access to narcotics and where doctors can administer such drugs in conformity with their patients' wants, without fear of criminal penalties for overprescribing, or civil penalties for malpractice, or both. Prescribing heroin and methadone for addicts is not the solution, but the very epitome of the problem. Enough said.

In a secular society committed to individual liberty and personal responsibility, the legislator's task is to enact laws to govern the behavior of adults, not children (whose management is primarily the responsibility of their parents). Once a person loses sight of this fact, it is easy to convince him that protecting children from drugs justifies making drugs difficult to obtain for adults.

Drugs are, of course, not the only dangerous artifacts in our environment. Electricity, household appliances and cleansers, and countless other products of human inventiveness endanger, injure, and kill children. We accept these inventions that, in the long run, make our lives healthier and safer, and adapt to them by teaching children to cope realistically with the risks they pose. Harassing adults and depriving them of rights will not work as a substitute for disciplining children.

Our obsession with the necessity of drug controls is closely intertwined with our attitudes toward self-harm and health care on the one hand, and, on the other hand, with our attitudes toward the manufacturer's and provider's tort liability for substances and interventions classified as "medical." In contemporary medical–political discourse, the issue of free will is raised only to assert its absence, and hence the unsuitability of market relations in connection with drugs and health care. To be sure, it makes no sense to let people make important choices if we believe that they are unable to choose, because they are the victims of addiction or mental illness.

We try to prevent our children from putting foreign bodies into their nostrils or other body cavities. Why? Partly because we love them and partly because their self-injury causes us a lot of trouble. In proportion as we treat adults like children—lifting the economic burden of medical care from their shoulders and placing it on everyone else's shoulders—we create a set of monstrous incentives whose reality we refuse to acknowledge. Protecting everyone from having to pay for his own health care and at the same time making everyone pay for everyone else's health care not only infantilizes everyone, but encourages everyone to meddle in everyone else's life (in order to reduce the medical services others require).

If Jones manufactures cigarettes which Smith buys and which give him lung cancer, the government forces Jones to defend himself in court against the accusation of having harmed Smith, and forces Taylor (as taxpayer) to pay Smith's medical treatment. So long as we use this formula for managing risks everyone in Taylor's position has an incentive to limit Jones's right to sell cigarettes and Smith's right to smoke them.

Suppose, then, that selling and buying cocaine were as legal in January 1996 as in January 1896. Jones sells cocaine, accurately labeled as to composition, side effects, lethal dose, and so forth. Smith buys some and dies as a result of using it. Mrs. Smith sues Jones for causing her husband's "wrongful death." Given our mindset, the judge refuses to dismiss the complaint and orders the matter to go to trial; the plaintiff's lawyers retain the most prestigious experts to testify that the "victim" was not responsible for his behavior; the jury imposes a judgment for ruinous compensatory and punitive damages on Jones. In such a legal atmosphere, only the black marketeer enjoys the *caveat emptor* protections of traditional contract.

In a secular society committed to individual liberty and personal responsibility the legislator's task is to enact laws to govern the behavior of adults, not children.

Not surprisingly, bringing a free market in goods and services into being in Russia has turned out to require more than abolishing the Gulag. Respect for private property and private profit, supported by a well-functioning commercial/legal system, is needed as well.

Mutatis mutandis, bringing a free market in drugs into being in America would require more than repealing criminal sanctions against selling and buying drugs. Respect for autonomy and responsibility, supported by a rational tort system, would be needed as well.

I fear that we shall not be able or willing to re-embrace a free market in drugs (whose benefits we enjoyed from 1776 until 1914) until the drug war has caused us a great deal more suffering and until we become willing to attribute that suffering to drug laws (and their consequences) rather than to drugs (and their abuse). □

7. Steven B. Duke

Mr. Duke is the Law of Science and Technology Professor at Yale Law School. He is co-author, with Albert C. Gross, of America's Longest War: Rethinking Our Tragic Crusade against Drugs *(Tarcher/Putnam, 1993). Professor Duke pays special attention to the widespread assumption that legalization would bring on huge addiction. And ends by wondering why conservative politicians, with a single exception, are apparently indifferent to what is happening under our noses as a result of the unwon, and unwinnable, war on drugs.*

"THE DRUG war is not working," says Bill Buckley. That is certainly true if we assume, as he does, that the purpose of the drug war is to induce Americans to consume only approved drugs. But as the war wears on, we have to wonder what its purposes really are.

If its purpose is to make criminals out of one in three African-American males, it has succeeded. If its purpose is to create one of the highest crime rates in the world—and thus to provide permanent fodder for demagogues who decry crime and promise to do something about it—it is achieving that end. If its purpose is de facto repeal of the Bill of Rights, victory is well in sight. If its purpose is to transfer individual freedom to the central government, it is carrying that off as well as any of our real wars did. If its purpose is to destroy our inner cities by making them war zones, triumph is near.

Most of the results of the drug war, of which the essayists here complain, were widely observed during alcohol prohibition. Everyone should have known that the same fate would follow if the Prohibition approach were merely transferred to different drugs.

It has been clear for over a decade that Milton Friedman's warnings about Prohibition *redux* have been borne out (see his "Prohibition and Drugs," *Newsweek*, May 1, 1972). At some point, the consequences of a social policy become so palpable that deliberate continuation of the policy incorporates those consequences into the policy. We are near if not past that point with drug prohibition.

For forty years following the repeal of alcohol prohibition, we treated drug prohibition as we did other laws against vice: we didn't take it very seriously. As we were extricating ourselves from the Vietnam War, however, Richard Nixon declared "all-out global war on the drug menace," and the militarization of the problem began. After Ronald Reagan redeclared that war, and George Bush did the same, we had a drug-war budget that was 1,000 times what it was when Nixon first discovered the new enemy.

The objectives of the drug war are obscured in order to prevent evaluation. A common claim, for example, is that prohibition is part of the nation's effort to prevent serious crime. Bill Clinton's drug czar, Dr. Lee Brown, testified before Congress:

> Drugs—especially addictive, hard-core drug use—are behind much of the crime we see on our streets today, both those crimes committed by users to finance their lifestyles and those committed by traffickers and dealers fighting for territory and turf. . . . Moreover, there is a level of fear in our communities that is, I believe, unprecedented in our history . . .

If these remarks had been preceded by two words, "Prohibition of," the statement would have been correct, and the political reverberations would have been deafening. Instead, Dr. Brown implied that drug consumption is by itself responsible for "turf wars" and the other enumerated evils, an implication which he and every other drug warrior know is false. The only possibility more daunting than that our leaders are dissembling is that they might actually believe the nonsense they purvey.

I have little to add to the catalogue of drug-war casualties in the other essays assembled here. I do, however, see another angle of entry for Mr. Buckley's efforts at "quantification." I have argued elsewhere that the drug war is responsible for at least half of our serious crime. A panel of experts consulted by *U.S. News & World Report* put the annual dollar cost of America's crime at $674 billion. Half of that, $337 billion, was the *total* federal budget as recently as 1975. The crime costs of drug prohibition alone may equal 150 per cent of the entire federal welfare budget for 1995.

I also think Mr. Buckley understates the nonquantifiable loss of what he quaintly refers to as "amenities." Not only is it nearly suicidal to walk alone in Central Park at night, it is impossible in sections of some cities safely to leave one's home, or to remain there. Some Americans sleep in their bathtubs hoping they are bullet-proof. Prohibition-generated violence is destroying large sections of American cities. We can have our drug war or we can have healthy cities; we cannot have both.

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In this collection of essays, we critics have focused on the costs of the drug war. The warriors could justly complain if we failed to mention the benefits. So let's take a look at the "benefit" side of the equation. Were it not for the drug war, the prohibitionists say, we might be a nation of zombies. The DEA pulled the figure of 60 million from the sky: that's how many cocaine users they say we would have if it weren't for prohibition. Joseph Califano's colleague at the Center on Addiction and Substance Abuse, Dr. Herbert Kleber, a former assistant to William Bennett, puts the number of cocaine users after repeal at a

more modest 20 to 25 million. In contrast, government surveys suggest that only about 3 million Americans currently use cocaine even occasionally and fewer than 500,000 use it weekly.

The prohibitionists' scenarios have no basis either in our history or in other cultures. In many countries, heroin and cocaine are cheap and at least de facto legal. Mexico is awash in cheap drugs, yet our own State Department says that Mexico does "not have a serious drug problem." Neither cocaine nor heroin is habitually consumed by more than a small fraction of the residents of any country in the world. There is no reason to suppose that Americans would be the single exception.

Lee Brown used to rely on alcohol prohibition as proof that legalization would addict the nation, asserting that alcohol consumption "shot straight up" when Prohibition was repealed. He no longer claims that, it having been pointed out to him that alcohol consumption increased only about 25 per cent in the years following repeal. Yet even assuming, contrary to that experience, that ingestion of currently illegal drugs would double or triple following repeal, preventing such increased consumption still cannot be counted a true benefit of drug prohibition. After repeal, the drugs would be regulated; their purity and potency would be disclosed on the package, as Mr. Buckley points out, together with appropriate warnings. Deaths from overdoses and toxic reactions would be reduced, not increased. Moreover, as Richard Cowan has explained (*NR*, "How the Narcs Created Crack," Dec. 5, 1986), the drugs consumed after repeal would be less potent than those ingested under prohibition. Before alcohol prohibition, we were a nation of beer drinkers. Prohibition pushed us toward hard liquor, a habit from which we are still recovering. Before the Harrison Act, many Americans took their cocaine in highly diluted forms, such as Coca-Cola.

We would also end the cruel practices described by Ethan Nadelmann wherein we deny pain medication to those who need it, preclude the medical use of marijuana, and compel drug users to share needles and thus to spread deadly diseases. The proportion of users who would consume the drugs without substantial health or other problems would be greatly increased. In comparison to any plausible post-repeal scenario, therefore, there simply are *no* health benefits achieved by prohibition.

GIVEN the forum, I should perhaps confess that I am not now, nor have I ever been, a conservative. As an outsider, therefore, perhaps I can be pardoned for my inability to see consistency in the positions conservatives commonly take on drugs and related issues. I can understand how one who believes that government should force us to lead proper lives can, albeit mistakenly, support drug prohibition. But I cannot comprehend how *any* conservative can support the drug war. That is my major mystery. I am also perplexed by some subordinate, mini-mysteries, of which here are a few:

—Why do so many conservatives preach "individual responsibility" yet ardently punish people for the chemicals they consume and thus deny the right that gives meaning to the responsibility? Many of these same conservatives would think it outrageous for the government to decree the number of calories we ingest or the kind of exercise we get, even though such decrees would be aimed at preserving our lives, keeping us productive, and reducing the drain on scarce medical resources. The incongruity of these positions is mystifying, and so is the willingness of conservatives, in order to protect people from their own folly, to impose huge costs in death, disease, crime, corruption, and destruction of civil liberties upon others who are entirely innocent: people who do not partake of forbidden drugs.

—Newt Gingrich, Charles Murray, and other conservatives are rightly concerned about the absence of fathers in the homes of so many of America's youngsters. Where are those fathers? At least half a million are in prison, often for nothing worse than possessing drugs.

—Countless conservatives revere the right to one's property. Yet many conservatives support drug forfeiture as gladly as liberals. Congress has made a criminal prosecution unnecessary for persons with property who are associated (even if indirectly) with illicit drugs. An apartment house may be forfeited if a tenant grows a marijuana plant in his bathroom. A grandmother's home may be forfeited if a grandson hides drugs in the basement which he sells to his friends. The Supreme Court has said that there are constitutional limits on forfeitures, but it has yet to find any. With the notable exception of Congressman Henry Hyde (see his book, *Forfeiting Our Property Rights*), most legislators are unconcerned about drawing a line.

—Many conservatives strongly support schemes to "devolve" matters from the Federal Government to state and local governments. Yet there does not appear to be a single conservative politician in America who applies this principle to drug prohibition. The mystery deepens when we remember that this is precisely the way we handled alcohol prohibition. When we repealed the Eighteenth Amendment, we didn't declare that all forms of alcohol distribution were beyond the reach of prohibition; in the Twenty-First Amendment, we simply let each state decide how it wanted to handle alcohol. Some remained dry. Many devolved the issue to cities and counties, some of which have elected to maintain prohibition to this very day. Judge Sweet and others make a powerful case for applying this approach to other drugs in addition to alcohol. Why hasn't any conservative in elective office at least suggested that it be *considered*?

The only benefit to America in maintaining prohibition is the psychic comfort we derive from having a permanent scapegoat. But why did we have to pick an enemy the warring against which is so self-destructive? We would be better off blaming our ills on celestial invaders flying about in saucers. □

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